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ASSIGNMENT BOOKLET

Legal Studies 3040

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FOR TEACHER USE ONLY

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Teacher

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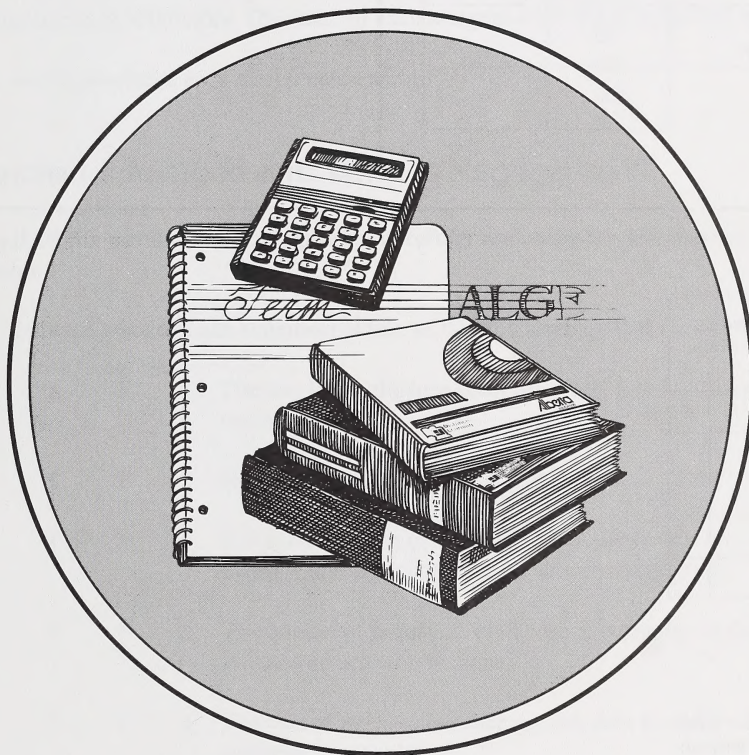
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LEGAL STUDIES

3040



Negligence

ASSIGNMENT BOOKLET

FOR TEACHER'S USE ONLY

Summary

	Total Possible Marks	Your Mark
Section 1 Assignment	33	
Section 2 Assignment	32	
Section 3 Assignment	35	
	100	

Teacher's Comments

This document is intended for

Students	✓
Teachers	✓
Administrators	
Parents	
General Public	
Other	

Legal Studies 3040
Assignment Booklet
Negligence
Learning Technologies Branch
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ASSIGNMENT BOOKLET

LEGAL STUDIES 3040: NEGLIGENCE

Your mark on this module will be determined by how well you do your assignments in this booklet.

Work slowly and carefully. If you are having difficulties, go back and review the appropriate section.

There are three section assignments in this Assignment Booklet. The total value of these assignments is 100 marks. The value of each assignment is stated in the left margin.

Be sure to proofread each assignment carefully.

33

Section 1 Assignment: What Is Negligence?

Read all the parts of your assignment carefully and record your answers in the appropriate places.

3

1. Indicate whether each statement is true or false by circling T or F.

- | | | |
|---|---|--|
| T | F | a. The test for negligence most often employed in our courts is that of the reasonable person. |
| T | F | b. Negligence is an intentional tort. |
| T | F | c. If it can be shown that the defendant did have a duty of care to the plaintiff, the defendant is not liable for negligence. |
| T | F | d. The burden of proof in a civil case is normally on the person who initiates an action (the plaintiff). |
| T | F | e. The rule of <i>res ipsa loquitur</i> applies only to cases where the cause of the accident is unexplained. |
| T | F | f. Where negligence has clearly occurred but the victim cannot determine who actually did the damage, the burden of proof shifts to the defendants to prove themselves innocent. |

2. Answer the following questions in the spaces provided. Use sentence and paragraph form where appropriate.

②

- a. **Four** elements that must be proven to establish a case in negligence are

i. _____

ii. _____

iii. _____

iv. _____

③

- b. Briefly define *res ipsa loquitur*, describe how it works, and explain how it's used.

②

- c. Can a person be guilty of negligence without meaning to be? Explain your answer.

②

- d. Explain how negligence is different from a simple accident on someone's part that may have harmed another, but for which no legal blame is assigned.

②

- e. Briefly explain your duty of care to other students in your school. Give specific examples of expected behaviour to illustrate your answer.

②

- f. Does the standard of care expected by the courts differ in the following situations? Explain why or why not?

- A wall falls down when you've hired a carpenter to build your house.
- A wall falls down when a neighbour is helping you build your house.

3. Examine the following cases and answer the questions that come after them.

- a. *Windjack v. Rowein*

The defendant left an Edmonton bar at 1:00 A.M. The manager, suspecting that the defendant had stolen some objects from his table, became involved in a dispute with him outside the bar; other hotel employees tried to help. The defendant got into his vehicle and began driving in circles in the parking lot, endangering the employees' lives. When he stopped momentarily, the plaintiff, an employee who had been ordered by the manager to "go out and help the boys," reached into the vehicle in an attempt to get the car keys. At that moment the defendant drove off at a high speed, dragging and eventually running over the plaintiff. The plaintiff was seriously injured.

②

- i. What would the plaintiff's arguments have been?

②

- ii. What would the defendant's arguments have been?

④

- iii. If you were the judge, in whose favour would you have decided this case? Explain your reasons in terms of the elements needed to establish liability in negligence law.

b. *Wurban v. Lipak* (1982)

The plaintiff's husband was an experienced dragster racer (dragsters are a type of racing car). He was competing at a race when he sideswiped another dragster that had stalled earlier and been left on the edge of the track awaiting a tow truck. This vehicle was clearly visible, and wasn't obstructing the track. The driver died as a result of this accident and his family brought a legal action against three defendants:

- the manager of the track
- the race starter
- the driver of the stalled vehicle

The judge ruled against the plaintiff.

③

- i. Explain how in the eyes of the plaintiff how **each** of the defendants **might** have been liable in a negligence case.

- the manager

- the starter

- the driver

3

ii. If you were the lawyer representing the defendants, explain the arguments you would have used to defend **each** of them.

- the manager

- the starter

- the driver

3

iii. Do you agree with the judge's decision? Explain your answer.

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Section 2 Assignment: Damages, Defences, and Special Liabilities

Read all the parts of your assignment carefully and record your answers in the appropriate places.

4

1. Study the following two cases and then, in the appropriate boxes in the chart provided, indicate with a **Yes**, **No**, or **Perhaps** whether damages of each sort are likely to be awarded. For each answer, list the factors that make damages of that sort appropriate or not.

Case #1

The plaintiff was a twelve-year-old girl who suffered permanent brain impairment due to head injuries sustained in a car accident. It seemed certain that because of this impairment the girl would never be able to find regular employment and would have to be looked after for the rest of her life. The defendant had been driving recklessly and showed no remorse for what he'd done to the plaintiff.

Case #2

The plaintiff was a seventy-year-old retired man who was slightly hurt but psychologically traumatized in a car accident. He required some slight medical attention, but after the accident he was terrified of motor vehicles and could no longer ride in them. He was plagued by nightmares, and had to undergo psychiatric treatment. The defendant, who was judged to be only 50 percent responsible for the accident, was very concerned by the plaintiff's condition and distraught over the results of her negligent driving.

	Case #1	Case #2
General Damages— Pecuniary Losses		
General Damages— Non-pecuniary Losses		
Special Damages		

Punitive Damages		
Nominal Damages		

2. Read the following cases and answer the questions that follow them.

a. *Choppin v. Caouette* (1982)

The parties to this case had neighbouring cottages at a lake. They had been friends for years and were familiar with each other's properties. One day the plaintiff paid a visit to the defendant but, finding no one home, turned and stepped off the porch at a spot where a stair had always been. For some reason the defendant had removed the stair, with the result that the plaintiff fell about eighteen inches, injuring his leg in the process. The court determined that the plaintiff and the defendant were each 50 percent liable.

Briefly explain how each of the following concepts or terms are illustrated in this case:

②

i. contributory negligence

②

ii. occupiers' liability

②

iii. licensee

②

iv. specific damages

b. *Zacharuk v. Kitlarchuk and Sawiak* (1979)

The three parties to this suit were moving machinery with a tractor fitted with a hydraulic ram. The plaintiff, a seventeen-year-old boy, had been asked to help by Kitlarchuk, who owned the property. Kitlarchuk was told of the boy's lack of experience and he assured the boy's father that he wouldn't be doing anything dangerous. However, Kitlarchuk asked the plaintiff to hold the ram and help guide it into its fitting on a machine, and in the process his fingers were cut off. The plaintiff was being careful at the time, but his inexperience resulted in the injury.

②

i. If the defendants use the defence of contributory negligence, will it likely succeed? Explain why or why not.

②

ii. If the defendants use the defence of voluntary assumption of risk will it likely succeed? Explain why or why not?

②

- iii. If the defendants are found liable, what types of damages will the plaintiff likely be awarded. Name the types of damages and explain why they'd be appropriate.

②

- c. *Bliss v. Heimbecker and Barker* (1982)

An employee of the defendant burned off some grass on the defendant's property as part of his duties; but the fire escaped onto the plaintiff's land and damaged the house, driveway, and other buildings.

Since the defendant didn't actually light this fire, would the courts likely find her liable? Explain why or why not.

- d. *Meier v. Qualico Developments* (1982)

The plaintiff, along with many other people in the area, was in the habit of using a vacant piece of land owned by the defendant for recreational purposes. The defendant was aware of this and hadn't tried to stop it. When the defendant began to prepare the land for development, workers brought in heavy equipment and moved a good deal of earth, digging holes and levelling hills. However, no attempt was made to notify people who used the land recreationally; there were no signs, fences, or any other warnings posted when the workers weren't present. The plaintiff went onto the land on his motorcycle one evening after dark and fell into a large excavation, badly injuring himself. The court decided that the defendant was 75 percent liable and the plaintiff 25 percent liable.

- ② i. Was the plaintiff an invitee, a licensee, or a trespasser? Explain your answer.

- ② ii. What would the arguments for the defendant likely be?

- ② iii. What would the arguments for the plaintiff likely be?

- ② iv. Why was the liability split 75%/25%?

②

3. Mr. Schultz was advised by his doctor to have an operation. His doctor conscientiously informed him of all the risks she knew about, but unknown to the doctor there was another risk which, though very unlikely, could lead to serious complications. Unfortunately this unlikely situation developed in Mr. Schultz's case, and he lost about 75 percent of the use of his left arm.

Would the doctor be held liable? Explain why or why not?

②

4. Lloyd accepted a lift with Esmé, knowing that Esmé's car had been declared mechanically unfit to drive. An accident occurred due to a mechanical failure, and Lloyd injured both his legs. At the trial Esmé used the defence of voluntary assumption of risk. Would this defence likely succeed? Explain why or why not.

35

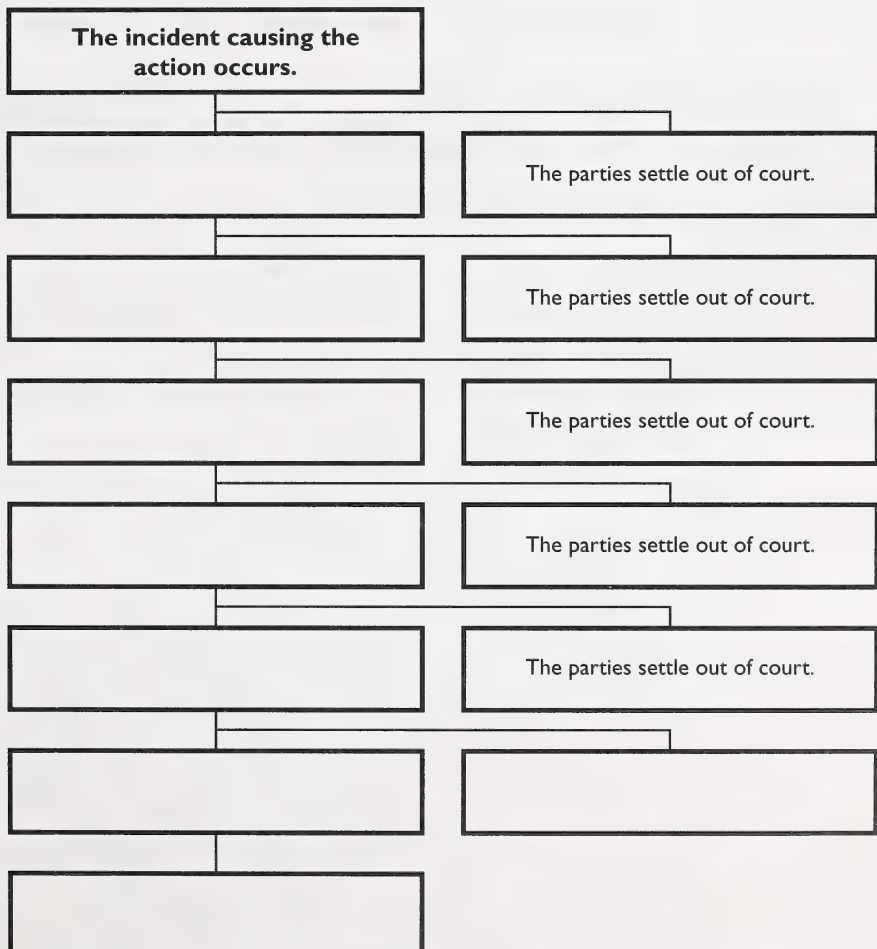
Section 3 Assignment: Procedures, Issues, and Careers

Read all the parts of your assignment carefully and record your answers in the appropriate places.

4

1. What follows is a partially completed diagram illustrating the major processes involved in taking a civil action to the Court of Queen's Bench. Write the following sentences in the boxes where they belong to correctly complete the diagram.

- The pre-trial conference takes place.
- The statement of claim is issued and served.
- The appeal takes place.
- The examination for discovery is held.
- The statement of defence is issued and served.
- The court's decision is enforced.
- The trial is held.
- The parties settle during the trial.



5

2. Complete the following statements by correctly filling in the missing words or phrases.

- a. The plaintiff and defendant in a legal action are collectively known as _____.
- b. In Alberta, Small Claims Court is known as the _____.
- c. A defendant in a case in Alberta's Provincial Court, Civil Division, files a _____ in response to a civil claim if he or she intends to contest the matter.
- d. In actions in Small Claims Courts, both plaintiff and defendant are usually represented by _____, except in the case of minors, who must be represented by _____.
- e. A statement of claim, statement of defence, counterclaim, and so on can be collectively referred to as _____.
- f. In Alberta's Court of Queen's Bench, a defendant can be tried by a _____ or by a _____.
- g. Normally in a civil trial the lawyer for the _____ cross-examines the witnesses for the other side before presenting the witnesses for his or her client.
- h. The first opportunity the defendant's lawyer has to question the plaintiff in a civil action in a higher court is normally during the _____.

3. The incident described in what follows resulted in a Small Claims Court legal action. Read the details of the event; then fill in **both** the civil claim and dispute note forms that follow it.

Oksana Bauer of 123456 – 78 Avenue, Edmonton, Alberta T1A 2B3 (telephone number 444-5555) was out with friend and walking her dog Waldo on November 4 of the current year along the sidewalk at 111 Street and 51 Avenue near Southgate Shopping Centre. Justin Jakubec of 22334 – 111 Street, Edmonton, Alberta T3C 4D5 (telephone number 444-3333) was in-line skating down the sidewalk. Here are their versions of what happened.

Oksana's Story

Justin, along with his friend Dexter Baker, was skating along the sidewalk while swinging a baseball bat. As he passed, he negligently struck Waldo with the bat. The result was a visit to the vet and a bill of \$450 for treatment and medication. My friend Christa McNab saw everything. (Oksana files her claim on December 9 of the current year.)

Justin's Story

I was skating slowly on the sidewalk. I'd stopped to let Oksana, Christa, and the dog go past when the dog jumped on me and I thought it was going to bite me. I hit it with my bat to protect myself. My friend Dexter saw everything. (Justin filed his dispute note on December 12 of the current year.)

2

a.



Between:

**In The Civil Division of
The Provincial Court of Alberta**

Docket No.

Plaintiff

and

Defendant

Civil Claim

The Plaintiff Claims from the Defendant \$ _____ and costs of this action. The Claim arose at _____, Alberta on or about the _____ day of _____, 19 ____.

The reasons for the Claim are:

The Plaintiff's Mailing Address is:

Street Address _____

City _____

Province _____

Postal Code _____

Res. Phone _____

Bus. Phone _____

The Defendant's Mailing Address is:

Street Address _____

City _____

Province _____

Postal Code _____

Res. Phone _____

Bus. Phone _____

The Defendant's Mailing Address is:

Street Address _____

City _____

Province _____

Postal Code _____

Res. Phone _____

Bus. Phone _____

Dated this

_____ day of _____, 19 ____

at _____, Alberta.

Signature of Plaintiff / Agent / Solicitor _____

Print Name _____

I will be calling _____ witnesses.

Issued by The Provincial Court of Alberta

this _____ day of _____, 19 ____.

The Court's Address is:

Clerk of The Provincial Court

Default Judgment / Noting in Default

The Defendant _____

having been served with a Civil Claim and not having filed a Dispute Note and the time for doing so having expired, ☐ the Defendant named above is noted in default.

☐ Judgment is entered in favor of the Plaintiff for

\$ _____

interest of

\$ _____

and costs of

\$ _____

for a total judgement of

\$ _____

Entered this _____ day of _____, 19 ____

At _____ a.m. / p.m. at _____, Alberta.

Clerk of The Provincial Court

¹ Alberta Justice, *Civil Claim* (Edmonton; Department of Justice, Government of Alberta, April 1996). Reprinted by permission.

2

b.



Between:

In The Civil Division of
The Provincial Court of Alberta

Docket No.

Plaintiff

and

Defendant

Dispute Note

1. I dispute the Plaintiff's Claim for the following reasons:

2. I Counterclaim or Claim a set-off for \$ _____, for the following reasons:

3. My Mailing Address is:

Street Address _____	City _____	Province _____	Postal Code _____	Res. Phone _____	Bus. Phone _____
----------------------	------------	----------------	-------------------	------------------	------------------

Dated this _____

I will be calling _____ witnesses at the hearing of this matter.
number of

_____ day of _____, 19 _____

at _____, Alberta.

Signature of Defendant / Agent / Solicitor_____
Print Name

Instructions to the Defendant

* *If you do not have a legitimate reason for disputing a claim, filing a Dispute Note may result in increased costs to you.*

1. In paragraph 1, state clearly the reasons you are disputing the Plaintiff's Claim. If the Plaintiff's Claim is disputed in part only, state which part is disputed.
2. In paragraph 2, if you are claiming an amount from the plaintiff, clearly state the amount you are claiming and the reasons.
3. In paragraph 3, give an address at which documents may be sent to you.
4. Deliver the completed Dispute Note in person or by mail to the Court address shown on the front of the Civil Claim.
5. **Please do not send any additional material with your Dispute note (i.e. books, papers, etc.).**
6. After you have filed the Dispute Note, you will be notified in writing by the Court of the time, date, and place of the hearing. Bring your additional material to court for your hearing.

For office use only

Recieved at _____ a.m.
p.m.

J 1924 Rev Jun 94

It is your responsibility to notify the Court of any change of address.

¹ Alberta Justice, *Dispute Note* (Edmonton; Department of Justice, Government of Alberta, June 1994). Reprinted by permission.

4. In this section you've looked at some challenging issues in negligence law. The case that follows fits into this category. Read it and answer the questions that come after it.

In the case of *ter Neuzen v. Korn* (1995), the plaintiff, Kobe ter Neuzen, and her husband were unable to have a child due to the husband's infertility. The plaintiff went to the clinic operated by the defendant, Dr. Korn, to be artificially inseminated. Unfortunately, she became infected with HIV (the virus that causes the disease AIDS) due to this insemination and sued Dr. Korn and his clinic for negligence. (She also sued under contract law, but this needn't concern you here). The case went to the Supreme Court of Canada in 1995.

- ② a. When the plaintiff was attending Dr. Korn's clinic, nothing was known of the risks that might be involved because the procedure was new. Do you think that this fact should have reduced Dr. Korn's liability as a doctor and a professional? Give clear reasons for your answer.

- ① b. What precautions do you think should be used today to protect people like Ms. ter Neuzen?

①

- c. Do you think the donor of the sperm that infected Ms. ter Neuzen should be sued in this situation? Explain why or why not.

②

- d. If you were the judge of this case, explain what your decision would be on liability.

5. Select an issue that is currently challenging legal experts in the area of negligence law. You may pick one of the issues discussed in this section or another issue that interests you and which you can investigate (but be sure it's a negligence issue). If the issue seems too big to deal with here, you may select a single aspect of it.

④

- a. Explain what the issue is and point out why it presents challenges to legal experts. In your discussion be sure to point out conflicting viewpoints on the issue.

(There is more room for your answer on the next page.)

This image shows a single page of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.

(There is more room for your answer on the next page.)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

b. Now explain your views on the issue—in other words, how you think it should be resolved. Be careful to give reasons for your answer.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(There is more room for your answer on the next page.)

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6. In the last activity of this section you did some research into a career or occupation related to civil litigation and created a job profile on it.

⑥

- Take the information you have in your profile and write up a short report on the occupation. Be sure to include all the information in your profile; feel free to add more if you wish.

If for some reason you weren't happy with the job you investigated in Activity 4, you may certainly pick a different one, research it, do a profile on it, and write your report here.

Your report will be marked on

- content
- quality and amount of research
- organization
- writing mechanics

(There is more room for your answer on the next page.)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

(There is more room for your answer on the next page.)

①

- b. Is this job one you'd enjoy doing? Would you be suited for it? Explain your answer in two or three sentences.

①

- c. List the source or sources you used to research your chosen occupation.



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Assignment Booklet

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